



Filed via regs.comments@federalreserve.gov

July 31, 2017

Ms. Ann E. Misback
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Ave NW
Washington, DC 20551

***Re: 12 CFR 229: Availability of Funds and Collection of Checks
R-1564***

Dear Ms. Misback:

The Illinois Credit Union League (ICUL) is the primary association for nearly 300 state and federally chartered credit unions throughout the State of Illinois, who in turn serve 3.5 million consumers. We thank you for the opportunity to comment on the Federal Reserve System (FRS) proposed rule regarding the availability of funds and collection of checks as it relates to determining the authenticity of a substitute or electronic check. We agree that the current payment environment requires changes to the traditional payment processing system. In addition to discussing our thoughts on the proposed rule, we will begin with some suggestions for greater efficiency and clarity regarding the availability of funds as implemented by Regulation CC.

We ask that the Board consider adjusting the funds availability policy for deposits made through remote deposit capture (RDC) due to recent issues with the practice. For example, there have been situations with checks deposited through RDC that have been altered and represented for payment. In these cases, based on the Uniform Commercial Code (UCC) transfer and presentment warranties (§3-416 & §3-417), the original depository institution suffers the loss even though it processed the check in accordance with the current funds availability policy before the alteration occurred. In this circumstance, if the depository financial institution was allowed to extend holds on checks deposited through RDC, those losses could have been avoided. This issue is particularly harmful to credit unions considering its ownership structure. As a result, losses suffered by credit unions have a direct impact on the consumer.

In addition, we ask that the Board provide clarity regarding what type of evidence would be adequate to overcome the presumption of alteration. Also, information is needed about what agency would have the authority to determine if the evidence provided satisfies the requirements to avoid the presumption of alteration. If the parties involved are expected to agree if the evidence provided is adequate to overcome the presumption, this may delay the payment process. ICUL recommends that the Federal Reserve provide detail about its expectations of financial institutions regarding this process.

In today's banking environment it will be difficult for the depository or collecting bank to produce the original check in cases of doubt. As the volume of check fraud continues to rise, the



risk of loss will certainly increase for those institutions that do not keep the original checks. We would ask the board to consider allowing a scanned image of the original check in lieu of the original to avoid the presumption of alteration. As an alternate suggestion, the board could add a time limitation in which a financial institution can request the original check in cases of doubt. Making these adjustments will allow CUs to continue to meet the demands of its membership by providing an efficient and safe banking experience.

The proposed rule requested comment on whether the presumption should apply to check date alterations. We support including checks with date alterations in the proposed presumption of alteration rule. A date alteration typically occurs when the original check date is beyond the stale date threshold. If a stale dated check is paid due to an undiscovered alteration it would result in a loss for the depository financial institution. This provision must be added in order to keep the proposed rule consistent with the definition of a check alteration per the UCC § 3-407(a).

The proposed rule also asked if a bank should be able to claim the presumption of alteration for a check it received and destroyed. We do not support allowing a financial institution to claim the presumption rule if it received and destroyed the original check. Adding this provision would allow a financial institution to potentially shift liability for the loss, as a result of negotiating a forged or altered check, by claiming the presumption knowing that the original check is not available. Financial institutions must find ways to work together to prevent altered and fraudulent items from benefiting those committing the crimes. In addition, regulations should promote unity amongst financial institutions rather than creating loopholes that encourage them to work against each other.

We support the Board's efforts to streamline the check processing environment by creating a way to eliminate doubt and processing delays by adopting a presumption of alteration. We also support the effort to maintain consistency with the existing rule. However, we do not support regulations that create increased liability for credit unions. At the Illinois Credit Union League we support the "People Helping People" mission of the credit union industry. While we understand that our current banking environment has generated some unique challenges that must be addressed, we do not agree with overregulation or one size fits all regulations. That philosophy has contributed to a significant reduction in the number of credit unions available to serve the consumers in our communities.



We thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink that reads "Shannon Basile". The signature is fluid and cursive, with a large initial 'S'.

ILLINOIS CREDIT UNION LEAGUE

By: Shannon Basile
Compliance Analyst